

AMENDED IN SENATE MAY 1, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1427

Introduced by ~~Committee on Insurance (Assembly Members Solorio (Chair), Carter, Feuer, Hayashi, Skinner, Torres, and Wiecekowski)~~ Assembly Member Solorio

March 22, 2011

An act to amend ~~Sections 1872.83 and 11659~~ Section 114099.6 of the ~~Insurance Health and Safety Code~~, relating to ~~insurance food~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1427, as amended, ~~Committee on Insurance Solorio. Worker's compensation insurance: fraud. Food facilities: Sanitization.~~

Existing law, the California Retail Food Code, requires all food facilities in which food is prepared, or in which multiservice utensils and equipment are used, to provide manual methods to effectively clean and sanitize utensils, as specified. Existing law requires manual sanitization to be accomplished in a number of prescribed ways, including the application of sanitizing chemicals by immersion, manual swabbing, or brushing, using specified solutions. The law requires the State Department of Public Health to implement and administer those provisions, and delegates primary enforcement duties to local health agencies. A violation of these provisions is a misdemeanor.

This bill would authorize manual sanitization to be accomplished by immersion, manual swabbing, or brushing, using a solution of 0.5 ppm ozone for at least 30 seconds. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law governs the content and scope of workers' liability insurance policies. Existing law authorizes an insurer to issue limited workers' compensation policies, subject to prior approval as to form and substance by the Insurance Commissioner. A workers' compensation policy is limited only to the extent that the limitation is in accordance with specified administrative requirements prescribed by, and rules adopted by, the commissioner. The failure to observe the latter requirement in purporting to issue a limited worker's compensation policy makes any limitation on the policy ineffective.~~

~~This bill would make technical, nonsubstantive changes to the above-described provision imposing specified administrative requirements.~~

~~Existing law requires the Bureau of State Audits to evaluate the effectiveness of the efforts of various entities in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers' compensation, and to submit a report, as specified, to the Chairperson of the Senate Committee on Labor and Industrial Relations and the Chairperson of the Assembly Committee on Insurance on or before May 1, 2004.~~

~~This bill would repeal these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 114099.6 of the Health and Safety Code
- 2 is amended to read:
- 3 114099.6. Manual sanitization shall be accomplished in the
- 4 final sanitizing rinse by one of the following:
- 5 (a) Immersion for at least 30 seconds where the water
- 6 temperature is maintained at 171°F or above.
- 7 (b) The application of sanitizing chemicals by immersion,
- 8 manual swabbing, or brushing, using one of the following
- 9 solutions:

1 (1) Contact with a solution of 100 ppm available chlorine
2 solution for at least 30 seconds.

3 (2) Contact with a solution of 25 ppm available iodine for at
4 least one minute.

5 (3) Contact with a solution of 200 ppm quaternary ammonium
6 for at least one minute.

7 (4) *Contact with a solution of 0.5 ppm ozone for at least 30*
8 *seconds.*

9 (4)

10 (5) Contact with any chemical sanitizer that meets the
11 requirements of Section 180.940 of Title 40 of the Code of Federal
12 Regulations when used in accordance with the manufacturer's use
13 directions.

14 (c) Other methods approved by the enforcement agency.

15 *SEC. 2. If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*

20 ~~SECTION 1. Section 1872.83 of the Insurance Code is~~
21 ~~amended to read:~~

22 ~~1872.83. (a) The commissioner shall ensure that the Fraud~~
23 ~~Division aggressively pursues all reported incidents of probable~~
24 ~~workers' compensation fraud, as defined in Sections 11760 and~~
25 ~~11880, and in subdivision (a) of Section 1871.4, and in Section 549~~
26 ~~of the Penal Code, and forwards to the appropriate disciplinary~~
27 ~~body the names, along with all supporting evidence, of any~~
28 ~~individuals licensed under the Business and Professions Code who~~
29 ~~are suspected of actively engaging in fraudulent activity. The Fraud~~
30 ~~Division shall forward to the Insurance Commissioner or the~~
31 ~~Director of Industrial Relations, as appropriate, the name, along~~
32 ~~with all supporting evidence, of any insurer, as defined in~~
33 ~~subdivision (c) of Section 1877.1, suspected of actively engaging~~
34 ~~in the fraudulent denial of claims.~~

35 ~~(b) To fund increased investigation and prosecution of workers'~~
36 ~~compensation fraud, and of willful failure to secure payment of~~
37 ~~workers' compensation, in violation of Section 3700.5 of the Labor~~
38 ~~Code, there shall be an annual assessment as follows:~~

39 ~~(1) The aggregate amount of the assessment shall be determined~~
40 ~~by the Fraud Assessment Commission, which is hereby established.~~

~~The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.~~

~~The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.~~

~~(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.~~

~~(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.~~

~~(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.~~

~~(e) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful~~

1 acts described in Sections 1871.4, 11760, and 11880, Section
2 3700.5 of the Labor Code, and Section 549 of the Penal Code, not
3 be less than three million dollars (\$3,000,000). Any funds
4 appropriated by the Legislature pursuant to subdivision (b) that
5 are not expended in the fiscal year for which they have been
6 appropriated, and that have not been allocated under subdivision
7 (f), shall be applied to satisfy for the immediately following fiscal
8 year the minimum total amount required by this subdivision. In
9 no case may that money be transferred to the General Fund.

10 (d) After incidental expenses, at least 40 percent of the funds
11 to be used for the purposes of this section shall be provided to the
12 Fraud Division of the Department of Insurance for enhanced
13 investigative efforts, and at least 40 percent of the funds shall be
14 distributed to district attorneys, pursuant to a determination by the
15 commissioner with the advice and consent of the division and the
16 Fraud Assessment Commission, as to the most effective distribution
17 of moneys for purposes of the investigation and prosecution of
18 workers' compensation fraud cases and cases relating to the willful
19 failure to secure the payment of workers' compensation. Each
20 district attorney seeking a portion of the funds shall submit to the
21 commissioner an application setting forth in detail the proposed
22 use of any funds provided. A district attorney receiving funds
23 pursuant to this subdivision shall submit an annual report to the
24 commissioner with respect to the success of his or her efforts.
25 Upon receipt, the commissioner shall provide copies to the Fraud
26 Division and the Fraud Assessment Commission of any application,
27 annual report, or other documents with respect to the allocation of
28 money pursuant to this subdivision. Both the application for
29 moneys and the distribution of moneys shall be public documents.
30 Information submitted to the commissioner pursuant to this section
31 concerning criminal investigations, whether active or inactive,
32 shall be confidential.

33 (e) If a district attorney is determined by the commissioner to
34 be unable or unwilling to investigate and prosecute workers'
35 compensation fraud claims or claims relating to the willful failure
36 to secure the payment of workers' compensation, the commissioner
37 shall discontinue distribution of funds allocated for that county
38 and may redistribute those funds according to this subdivision.

39 (1) The commissioner shall promptly determine whether any
40 other county could assert jurisdiction to prosecute the fraud claims

1 ~~or claims relating to the willful failure to secure the payment of~~
2 ~~workers' compensation that would have been brought in the~~
3 ~~nonparticipating county, and if so, the commissioner may award~~
4 ~~funds to conduct the prosecutions redirected pursuant to this~~
5 ~~subdivision. These funds may be in addition to any other fraud~~
6 ~~prosecution funds or claims relating to the willful failure to secure~~
7 ~~the payment of workers' compensation prosecution otherwise~~
8 ~~awarded under this section. Any district attorney receiving funds~~
9 ~~pursuant to this subdivision shall first agree that the funds shall be~~
10 ~~used solely for investigating and prosecuting those cases of~~
11 ~~workers' compensation fraud or claims relating to the willful failure~~
12 ~~to secure the payment of workers' compensation that are redirected~~
13 ~~pursuant to this subdivision and submit an annual report to the~~
14 ~~commissioner with respect to the success of the district attorney's~~
15 ~~efforts. The commissioner shall keep the Fraud Assessment~~
16 ~~Commission fully informed of all reallocations of funds under this~~
17 ~~paragraph.~~

18 ~~(2) If the commissioner determines that no district attorney is~~
19 ~~willing or able to investigate and prosecute the workers'~~
20 ~~compensation fraud claims or claims relating to the willful failure~~
21 ~~to secure the payment of workers' compensation arising in the~~
22 ~~nonparticipating county, the commissioner, with the advice and~~
23 ~~consent of the Fraud Assessment Commission, may award to the~~
24 ~~Attorney General some or all of the funds previously awarded to~~
25 ~~the nonparticipating county. Before the commissioner may award~~
26 ~~any funds, the Attorney General shall submit to the commissioner~~
27 ~~an application setting forth in detail his or her proposed use of any~~
28 ~~funds provided and agreeing that any funds awarded shall be used~~
29 ~~solely for investigating and prosecuting those cases of workers'~~
30 ~~compensation fraud or claims relating to the willful failure to secure~~
31 ~~the payment of workers' compensation that are redirected pursuant~~
32 ~~to this subdivision. The Attorney General shall submit an annual~~
33 ~~report to the commissioner with respect to the success of the fraud~~
34 ~~prosecution efforts of his or her office.~~

35 ~~(3) Neither the Attorney General nor any district attorney shall~~
36 ~~be required to relinquish control of any investigation or prosecution~~
37 ~~undertaken pursuant to this subdivision unless the commissioner~~
38 ~~determines that satisfactory progress is no longer being made on~~
39 ~~the case or the case has been abandoned.~~

1 ~~(4) A county that has become a nonparticipating county due to~~
2 ~~the inability or unwillingness of its district attorney to investigate~~
3 ~~and prosecute workers' compensation fraud or the willful failure~~
4 ~~to secure the payment of workers' compensation shall not become~~
5 ~~eligible to receive funding under this section until it has submitted~~
6 ~~a new application that meets the requirements of subdivision (d)~~
7 ~~and the applicable regulations.~~

8 ~~(f) If in any fiscal year the Fraud Division does not use all of~~
9 ~~the funds made available to it under subdivision (d), any remaining~~
10 ~~funds may be distributed to district attorneys pursuant to a~~
11 ~~determination by the commissioner in accordance with the same~~
12 ~~procedures set forth in subdivision (d).~~

13 ~~(g) The commissioner shall adopt rules and regulations to~~
14 ~~implement this section in accordance with the rulemaking~~
15 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~
16 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
17 ~~2 of the Government Code). Included in the rules and regulations~~
18 ~~shall be the criteria for redistributing funds to district attorneys~~
19 ~~and the Attorney General. The adoption of the rules and regulations~~
20 ~~shall be deemed to be an emergency and necessary for the~~
21 ~~immediate preservation of the public peace, health, and safety, or~~
22 ~~general welfare.~~

23 ~~(h) The department shall report to the Governor, the Legislature,~~
24 ~~to the committees of the Senate and Assembly having jurisdiction~~
25 ~~over insurance, and the Fraud Assessment Commission on the~~
26 ~~activities of the Fraud Division and district attorneys supported~~
27 ~~by the funds provided by this section in the annual report submitted~~
28 ~~pursuant to Section 12922.~~

29 ~~The annual report shall include, but is not limited to, all of the~~
30 ~~following information for the department and each district~~
31 ~~attorney's office:~~

32 ~~(1) All allocations, distributions, and expenditures of funds.~~

33 ~~(2) The number of search warrants issued.~~

34 ~~(3) The number of arrests and prosecutions, and the aggregate~~
35 ~~number of parties involved in each.~~

36 ~~(4) The number of convictions and the names of all convicted~~
37 ~~fraud perpetrators.~~

38 ~~(5) The estimated value of all assets frozen, penalties assessed,~~
39 ~~and restitutions made for each conviction.~~

1 ~~(6) Any additional items necessary to fully inform the Fraud~~
2 ~~Assessment Commission and the Legislature of the fraud-fighting~~
3 ~~efforts financed through this section.~~

4 ~~(i) In order to meet the requirements of subdivision (g), the~~
5 ~~department shall submit a biannual information request to those~~
6 ~~district attorneys who have applied for and received funding~~
7 ~~through the annual assessment process under this section.~~

8 ~~(j) Assessments levied or collected to fight workers'~~
9 ~~compensation fraud and insurance fraud are not taxes. Those funds~~
10 ~~are entrusted to the state to fight fraud and the willful failure to~~
11 ~~secure the payment of workers' compensation by funding state~~
12 ~~and local investigation and prosecution efforts. Accordingly, any~~
13 ~~funds resulting from assessments, fees, penalties, fines, restitution,~~
14 ~~or recovery of costs of investigation and prosecution deposited in~~
15 ~~the Insurance Fund shall not be deemed "unexpended" funds for~~
16 ~~any purpose and, if remaining in that account at the end of any~~
17 ~~fiscal year, shall be applied as provided in subdivision (f) and to~~
18 ~~offset or augment subsequent years' program funding.~~

19 ~~SEC. 2. Section 11659 of the Insurance Code is amended to~~
20 ~~read:~~

21 ~~11659. The approved form of policy, limited pursuant to~~
22 ~~Section 11657, shall not be otherwise limited except by~~
23 ~~endorsement thereon in accordance with a form prescribed by the~~
24 ~~commissioner or in accordance with rules adopted by the~~
25 ~~commissioner. The endorsement form shall not be subject to~~
26 ~~Section 11658. Before prescribing the endorsement form or~~
27 ~~adopting a rule, the commissioner shall consult concerning it with~~
28 ~~the Workers' Compensation Appeals Board.~~